

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN F. SELBY
AND DEWAYNE E. GREEN

Appeal No. 95-2979
Application 08/093,571¹

ON BRIEF

Before KRASS, JERRY SMITH, and BARRETT, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 3, all of the claims remaining in the application.

The invention is directed to a CD guide and blocking shoe (shown as element 46 in Figures 3 and 4 of the application) which is integrated into an escutcheon-lens assembly to prevent the accidental insertion of a CD disc into a space (shown as "S" in the drawings) between the CD player and its upper support panel.

The guide and blocking shoe also prevents a second disc from being inserted into the CD player when there is already a CD disc in the player by loading the discs along a loading plane ("L" in the drawings) thus causing the two discs to come into edge-to-edge contact in the event a second insertion of a disc is attempted.

Independent claim 1 is reproduced as follows:

1. Escutcheon-lens construction for a compact disc player adapted to be operatively mounted in a vehicle, said escutcheon-lens construction comprising a door frame, a door fastened along the perimeter thereof to said door frame, said door having a slit that is normally closed and is openable by a compact disc so as to define an elongated and horizontally extending disc opening therein for the passage of a compact disc between a loading position external of the compact disc player and a play position within the player, singular opening restrictor and disc guide means located at and affixed behind said door to said escutcheon-lens construction at a point intermediate the width and on only one side of the disc opening and extending internally thereof in a plane transverse to said horizontally extending disc opening to permit the successful insertion of the disc through said door and into the player in a predetermined loading and unloading first path substantially aligned with said opening while blocking the insertion of a disc past said door in predetermined second paths inclined with respect to the loading and unloading path.

The examiner relies on the following references:

Bleiman	3,940,793	Feb. 24, 1976
Ikedo et al. (Ikedo)	4,507,768	Mar. 26, 1985
Kobayashi et al. (Kobayashi)	5,084,855	Jan. 28, 1992

¹ Application for patent filed July 19, 1993.

Yabuki (Japan) 4,245094² Sep. 1, 1992

Claims 1-3 stand rejected under 35 U.S.C. ' 103 as being unpatentable over either one of Kobayashi or Bleiman or Ikedo in view of Yabuki.³

Rather than reiterate the arguments of appellants and the examiner, reference is made to the brief and answer for the respective details thereof.

OPINION

We reverse.

Independent claim 1 requires that the "restrictor and disc guide means" be "located at and affixed behind said door to said escutcheon-lens construction at a point intermediate the width and on only one side of the disc opening and extending internally thereof..."

None of the primary references teaches or suggests such a guide means located and affixed as claimed. The examiner recognizes this deficiency in each of the references but explains that it would have been obvious to provide such a disk guide means in each of the primary references because, with regard to Kobayashi [page 5 of the answer] and Ikedo [page 10 of the answer], such a disc guide means would

² Our understanding of this reference is based on an English translation thereof prepared by the United States Patent and Trademark Office. A copy of said translation is attached hereto.

³ A final rejection under 35 U.S.C. ' 112, second paragraph, has been withdrawn by the examiner. Accordingly, such rejection is not before us on appeal.

"reduce manufacturing costs by having the disk guide means affixed to the front panel" and the "disk guide means could then be formed of the same material as the interior of the front panel." With regard to Bleiman, even though the examiner admits that Bleiman does not show a disc guide surface for use with an escutcheon-lens assembly for a disc player, the examiner reasons that it would have been obvious to apply the teachings of Bleiman to an escutcheon-lens assembly for a CD-player adapted for mounting in a vehicle "in order to facilitate correctly inserting a compact disk into a CD player, thereby minimizing the chance of damaging the compact disk (CD)" [page 7 of the answer].

In our view, the examiner's rationale for the obviousness of providing for a guide means affixed to the escutcheon-lens construction is borne of impermissible hindsight gleaned from appellants' own disclosure. First, there is no evidence that providing for the claimed guide means would, in any way, "reduce manufacturing costs," as alleged by the examiner. Second, without reference to the instant disclosure, the examiner has provided no evidence or reasonable basis for concluding that the artisan would have been led to form the guide means of the "same material as the interior of the front panel." Finally, we find no suggestion in the prior art for providing for the claimed

guide means "in order to facilitate correctly inserting a compact disk. . .minimizing the chance of damaging the compact disk (CD)." It is appellants who have taught this and not the prior art cited by the examiner. Therefore, the examiner appears to be implying that it would have been obvious to do what appellants have done simply because appellants have done it. This, of course, is not a cogent basis for a finding of obviousness within the meaning of 35 U.S.C.

' 103. While the prior art certainly shows ways of facilitating the correct insertion of a disc, those ways do not include or suggest appellants' escutcheon-lens construction with the restrictor and disc guide means as claimed.

The Yabuki reference is relied on by the examiner for the teaching of providing for the claimed door fastened to a door frame having a slit operable by a compact disc. While Yabuki may provide for such a teaching, the reference fails to provide for the deficiencies, noted supra, with regard to the primary references. Accordingly, Yabuki is of no help in providing evidence for the obviousness of having the claimed guide means located at and affixed behind the door to the escutcheon-lens construction on only one side of the disc opening and extending internally thereof.

The examiner has failed to establish a prima facie case of obviousness with regard to the instant claimed subject

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matter. Accordingly, the examiner's decision rejecting
claims 1 through 3 under 35 U.S.C. ' 103 is reversed.

REVERSED

Errol A. Krass)	
Administrative Patent Judge)	
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Jerry Smith)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
Lee E. Barrett)	
Administrative Patent Judge)	

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